

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RICHARD MARINO,	:	
	:	
Plaintiff,	:	Case No. 07-cv-7726 (RJH)(DFE)
	:	
v.	:	ECF CASE
GLOBAL CAPITAL HOLDINGS	:	
MANAGEMENT, LLC and JOSEPH	:	
PALLADINO,	:	
	:	
Defendants.	:	
	:	
	:	
	:	

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

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Attorneys for Plaintiff Richard Marino

PRELIMINARY STATEMENT

Plaintiff Richard Marino ("Marino") respectfully submits this memorandum of law in support of his motion pursuant to Rules 55 (a) and (b)(2) of the Federal Rules of Civil Procedure and Local Civil Rule 55.2, for an Order granting and entering a Default Judgment against Defendants Global Capital Holdings Management, LLC ("GCMH") and Joseph Palladino ("Palladino" and together with GCHM, the "Defendants"), jointly and severally, in the amount of \$3,254,443.77, plus per diem interest of \$966.66 from and including October 20, 2007 through and including the date of entry of the Default Judgment, plus post-Default Judgment interest at 9% per annum (the "Motion"), by reason of the Defendants' failure to plead or otherwise defend the Action herein as provided by the Federal Rules of Civil Procedure.

As set forth in the accompanying Affidavit of Marino sworn to on the 23rd day of October, 2007 (the "Marino Aff."), this Action arises from the Defendants' failure to make payments due to Marino under the terms of a Note and Guaranty (as those terms are defined in Complaint in this Action dated August 28, 2007 (the "Complaint")).

In the support of the Motion, Marino has submitted the Marino Aff., the Clerk of the Court's Certificate of Default dated October 17, 2007, the Complaint, the accompanying Affidavit of Michael H. Levison, Esq. of Day Pitney LLP sworn to on the 31st day of October, 2007 (the "Levison Aff."), the exhibits annexed thereto and the accompanying proposed Default Judgment, all of which are incorporated herein by reference.

ARGUMENT

Rule 55(a) of the Federal Rules of Civil Procedure provides that a plaintiff is entitled to the entry of a Default Judgment against a defendant who has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure. Federal Rules of Civil Procedure Rule 12(a) provides that a party has twenty (20) days to serve a responsive pleading to

a Complaint. Here, the Complaint was served upon both Defendants under New York law on September 11, 2007. (*See* Exhibit “B” to the Levison Aff.) Accordingly, the Defendants’ time to respond to the Complaint has expired and, as the Defendants have failed to answer or otherwise plead, Marino is entitled to the entry of a Default Judgment against Defendants.

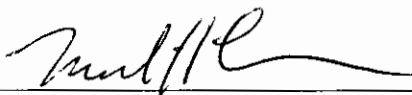
Local Civil Rule 55.2 provides that a plaintiff seeking the entry of a Default Judgment by the Court shall annex to its application (1) the Clerk’s certificate of default entered in accordance with Local Civil Rule 55.1, (2) a copy of the claim to which no response has been made and (3) a proposed form of default judgment. Here, both a copy of the Clerk’s Certificate of Default and a proposed form of Default Judgment are annexed to the Levison Aff. as Exhibit “D” and “E”, respectively. A copy of Marino’s claim, as set forth in the Complaint, is annexed to the Marino Aff. as Exhibit “A”.

In accordance with this Court’s individual practices, the Levison Aff. makes clear that this Court has subject matter jurisdiction over this Action, personal jurisdiction over the Defendants and the fact that Palladino is neither an infant nor an incompetent. Moreover, the Levison Aff. makes clear that both Defendants were given additional notice of Marino’s intention to file this Motion.

CONCLUSION

As such, Rules 55(a) and (b)(2) of the Federal Rules of Civil Procedure and Local Civil Rule 55.2 provide for the entry of a Default Judgment against the Defendants in the form annexed to the Levison Aff. as Exhibit "E".

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